

SHEILA CARTWRIGHT
Claimant

CORVIAS GROUP, LLC
Respondent

ACE AMERICAN INSURANCE COMPANY
Insurance Carrier

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

Claimant argues the ALJ's decision to deny her compensation should be reversed and work disability awarded along with outstanding medical bills paid and future medical granted to alleviate ongoing symptoms. Claimant asserts respondent's business is located

on an army base, and its parking lot is not open to the general public. Therefore, claimant was exposed to a risk to which the general public was not exposed.

Respondent contends the Award should be affirmed and claimant denied compensation because claimant presented no evidence respondent owned or had constructive ownership of the parking lot.

The issue on appeal is:

Did claimant's injury arise out of and in the course of her employment?

The nature and extent of claimant's injuries and disability, including work disability were raised in claimant's appeal. However, the Board is limited to reviewing decisions, findings, orders and awards of the ALJ. As the ALJ only decided whether claimant's injuries arose out of and in the course of her employment with respondent and whether timely notice was provided, should the ruling of the ALJ be reversed, the Board will remand this matter to the ALJ for additional findings on the remaining undecided issues.

FINDINGS OF FACT

Respondent contracts for the maintenance and construction of military housing at Fort Riley. Claimant performed computer work, a lot of filing and worked with contractors and insurance carriers and had worked for respondent since approximately August 2011. In February 2013, claimant worked for respondent as a field administrator.

On February 12, 2013, claimant fell on black ice in the parking lot and hit her head, back, left shoulder and neck. Respondent and the parking lot it utilizes are located on Fort Riley. No security clearance is needed to get on Fort Riley, just a driver's license and proof of insurance. Claimant had not yet clocked in on the day of the accident, she had not begun working and she was not paid mileage to and from her house.

Located in the building where claimant worked is the property management division of respondent, the construction division of respondent, the accounting department and Human Resources. Claimant was considered an employee of the construction division of the business. Claimant agreed employees of respondent, contractors and other visitors use the lot. There are no assigned parking spots and there is no limitation as to who can or cannot park in the lot. The building claimant worked in is surrounded by the parking lot. Claimant assumed respondent's property management division controls who cleans the parking lot. She did not have actual knowledge regarding who actually cleaned the lot and shoveled the snow. Claimant indicated that, as far as she knew, the concrete parking lot is under the exclusive control of respondent. However, on cross-examination claimant testified as follows:

Q. You mentioned earlier that -- you said Corvias had exclusive control over that parking lot, correct?

A. Yes.

Q. Upon what do you base that?

A. The Property Management side.

Q. What about the Property Management side?

A. They're to control who cleans the parking lot.

Q. And do you have something that says this?

A. No.

Q. And actually you assumed that the Property Management is the ones who has to have the parking lot clear, correct?

A. Yes.

Q. That is an assumption of yours?

A. Exactly.

Q. You do not know?

A. No, I don't.¹

Later, on re-direct examination, when asked by her attorney if she knew who cleaned the lot, and who shoveled the snow, claimant testified she did not know. She also acknowledged she had never seen any employee of respondent doing either activity during the time she worked there.²

After claimant fell, an ambulance was called and the safety officer filled out an accident report. Claimant was taken to the emergency room where she underwent a CT scan and x-rays of her shoulder, back and neck. She was sent to Occupational Health for physical therapy and an MRI of her left shoulder was taken. Claimant was given light duty restrictions and sent to a chiropractor at the request of respondent's insurance company.

¹ R.H. Trans. at 34.

² *Id.* at 35-36.

Claimant last worked for respondent on September 1, 2013. She testified her job ended because the work force was reduced due to lack of work. Claimant filed for unemployment and began receiving benefits after approximately one month.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2012 Supp. 44-501b(b)(c) states:

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2012 Supp. 44-508(f)(3)(B) states:

(B) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises owned or under the exclusive control of the employer or on the only available route to or from work which is a route involving a special risk or hazard connected with the nature of the employment that is not a risk or hazard to which the general public is exposed and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.

The ALJ determined claimant failed to prove the accident occurred on the employer's premises. Claimant was not clocked in, was not being paid and was injured in the parking lot over which respondent did not have exclusive control. The analysis provided by the ALJ is found to be both thorough and accurate and the Board adopts the same as its own. The denial of benefits in this matter is affirmed.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed. Claimant failed to prove she suffered personal injury by accident which arose out of and in the course of her employment with respondent.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Rebecca Sanders dated June 30, 2015, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November, 2015.

BOARD MEMBER

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